



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Riss International - Rate Applicability - Conflict
on GBLs
File: B-226006
Date: February 19, 1988

DIGEST

Where a carrier originally bills the government on the basis of rates published in tenders applicable to shipments tendered at a 10 cents per pound per article valuation, and the tenders are noted on the Government Bills of Lading (GBLs), the General Services Administration properly denied supplemental bills for substantially higher tariff charges. Even though the GBLs also contained a declared valuation of \$2.50 per pound per article, the \$2.50 notation was a mistake and the carrier published no tender applicable to the \$2.50 notation. In any event, the carrier had a duty to inquire as to the government's intent if it found the GBLs to be ambiguous.

DECISION

Riss International (Riss) asks the Comptroller General to review the General Services Administration's (GSA) claims settlement actions. Riss originally billed the government on the basis of rates published in tenders applicable to shipments tendered at a valuation of 10 cents per pound per article. The tenders, as well as a \$2.50 per pound per article declaration, were noted on the GBLs. The carrier later claimed higher tariff charges based on the \$2.50 valuation. We conclude that GSA properly denied the carrier's claims for the additional charges.

BACKGROUND

Riss transported 294 Department of Defense shipments on GBLs which contained two notations material to this case. One notation declared a released value of \$2.50 per pound per article and the other referred to one of several Riss rate tenders that offered reduced rates to the government under 49 U.S.C. § 10721 (1982) for shipments tendered at a maximum released value of not to exceed 10 cents per pound per

041326

article.^{1/} Riss originally billed and collected freight charges based on rates offered in the tenders that were noted on the GBLs. Subsequently, the carrier presented supplemental bills containing charges that were substantially higher. The tariff used by the carrier as the basis for the higher charges did not apply to shipments released at a declared value of \$2.50 per pound per article--the declaration made on the GBLs--because Riss did not publish a tariff specifically applicable to a \$2.50 valuation.

Riss presented the claims on the theory that the tenders were not applicable because government shippers declared a \$2.50 value on the GBLs, which was in excess of the 10 cents value applicable to the tenders. GSA disallowed the claims on grounds that shipping officers made a mistake and the GBL notations constituted a conflict as to the shippers' intentions which the carrier had a duty to question. A report from the Military Traffic Management Command (MTMC)^{2/} indicates that the shipping officers in issuing the GBLs inadvertently failed to comply with routing instructions, and stated that MTMC, Eastern Area, issued documentation after the shipments were completed to correct the errors by showing the government's original intent to ship at a released value not in excess of 10 cents per pound per article.

On appeal Riss argues that when the government declares a higher released value (such as \$2.50 rather than 10 cents, as here) the government obviously wants the carrier to assume greater liability for which the government expects to pay higher transportation charges. Riss says that carriers have no duty to question such GBL declarations and the government has no legal basis to change the declaration after transportation has been performed, as MTMC did here.

In support of its position Riss cites 56 Comp. Gen. 757 (1977) for the principle that tariff rules cannot be waived and American Farm Lines, B-203933, June 17, 1982, for the principle that the government must pay the lawful charges.

^{1/} The 10 cents released-value provision was published in item 848 of Riss Rules Tariff 103, which governed the rate tenders referenced on the GBLs. GSA questions whether the tenders were subject to the 10 cents limitation since the carrier published the provision in a governing tariff rather than in the tenders. We will not address the question since we sustain GSA's settlement action on other grounds.

^{2/} A letter from MTMC, dated September 28, 1987.

Riss also contends that a GBL reference to a carrier's tender does not determine the applicability of its rates.

DISCUSSION

It appears that Riss considered the lower tender rates to apply at the time it received the 294 shipments since Riss apparently ignored the \$2.50 notation and billed the government on the basis of the lower tender rates. Substantially later Riss selected higher tariff rates, which applied when there was no released valuation, as the basis for billing the government higher charges since it did not publish a tariff applicable specifically to shipments having a declared value of \$2.50. These circumstances suggest that the carrier understood when the shipments were received by Riss that the rates published in the carrier's tenders, shown on the GBLs, were intended to apply.

In any event, where conflicting valuation notations are present and the carrier publishes no rates for the higher-rated valuation, the carrier has a duty to inquire, since carriers are responsible for the issuance of proper bills of lading free from conflicting provisions. See C.I. Whitten Transfer Co., 52 Comp. Gen. 211 (1972); Continental Van Lines, Inc., B-206558, Nov. 29, 1983; Starflight, Inc., 65 Comp. Gen. 84 (1985).

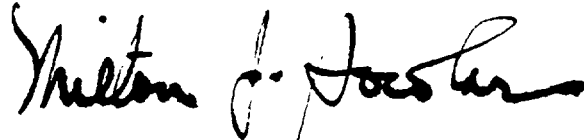
Concerning the decisions cited by Riss, we refer first to American Farm Lines, B-203933, supra. That decision held that where the government intended to ship at actual value the General Accounting Office would not object to payment of transportation charges at rates determined by the property's actual value. That case is inapposite here since, in view of the conflicting notations on the GBLs, there was no clear expression of intent on the part of the government.

We also see no relevance to 56 Comp. Gen. 757, supra, stating that tariff rules cannot be waived, since the present case does not involve waiver of a tariff rule. Here, Riss does not contend that the tenders applied by GSA expressly required the government to annotate the GBLs with a specific declaration of value as a condition of applicability.^{3/} Instead, it appears that when shipments were made under those tenders the carrier's liability was as provided under the tenders and no annotation to that effect was necessary. In this case the carrier apparently accepted

^{3/} Compare generally, American Farm Lines, B-200939, May 29, 1981.

and originally billed for nearly 300 shipments on that basis without question. Thus, it is our view that the tenders applied in GSA's settlement of the carrier's claims were properly applicable.

Accordingly, GSA's settlement is sustained.



for Comptroller General
of the United States